

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 RALPH COUNTRYMAN

6 Plaintiff,

7 v.

8
9 JACK PALMER, *et al.*,

10 Defendants.

3:11-cv-00852-ECR-VPC

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

August 6, 2012

11
12 This Report and Recommendation is made to the Honorable Edward C. Reed, Senior
13 United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant
14 to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's motion for a preliminary
15 injunction (#3).¹ Defendants opposed (#21) and plaintiff did not reply. The court has thoroughly
16 reviewed the record and recommends that plaintiff's motion for a preliminary injunction be denied.

17 **I. HISTORY & PROCEDURAL BACKGROUND**

18 Plaintiff Ralph Countryman ("plaintiff") is a *pro se* inmate at Northern Nevada Correctional
19 Center ("NNCC") in the custody of the Nevada Department of Corrections ("NDOC") (#14).
20 Plaintiff brings his complaint pursuant to 42 U.S.C. § 1983 and alleges violations of his rights under
21 the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act
22 ("RLUIPA"). *Id.* Pursuant to 28 U.S.C. § 1915A, the court screened the complaint and permitted
23 the following claims in counts I, II, III, and IV to proceed (#4).

24 In count I, plaintiff alleges that Kairos Prison Ministries ("Kairos"), a Christian organization,
25 applied to defendants to conduct a three-day event at NNCC (#14, p. 5). Plaintiff further claims that
26 the defendants denied the application and stated that they did not have the money to pay the prison
27

¹ Refers to the court's docket number.

1 staff needed to supervise the event. *Id.* Plaintiff states that defendants rejected Kairos's offer to pay
2 for the time that the staff would work to supervise the event. *Id.* at 6. Plaintiff has stated claims
3 under the First Amendment and RLUIPA (#4).

4 In count II, plaintiff alleges that the cancellation of the three-day religious event is
5 inconsistent with other NNCC practices, because they pay for prison staff to supervise Hanukkah
6 ceremonies and because policy allows for organizations to pay the costs of supervising religious
7 events (#14, pp. 8-9). Plaintiff has stated a claim under the Fourteenth Amendment Equal Protection
8 Clause and RLUIPA (#4, pp. 1-2).

9 In count III, plaintiff alleges that defendants require that a volunteer be present at religious
10 ceremonies (#14, p. 10). Plaintiff claims that he is unable to attend any Episcopalian ceremonies
11 over the weekend because no volunteers are available. *Id.* Plaintiff further alleges that defendants
12 have turned away, threatened, or revoked the status of volunteers, in retaliation for his prior civil
13 rights actions. *Id.* at 10-11 Plaintiff has stated a claim under the First Amendment and RLUIPA (#4,
14 p. 2).

15 In count IV, plaintiff alleges that defendants apply the requirement of the presence of a
16 volunteer inconsistently, because they do not require a volunteer be present for Native American and
17 Pagan religious ceremonies (#14, p. 12). Plaintiff has stated a claim under the Fourteenth
18 Amendment Equal Protection Clause and RLUIPA (#4, p. 2).

19 Plaintiff filed the instant motion on December 13, 2011 (#3). In his motion, plaintiff requests
20 a mandatory injunction "requiring the impoundment of all federal funds acquired and or expended
21 by the Nevada Department of Corrections since April 1, 2010, or in the alternative [sic] the
22 restoration of the religious programs at Northern Nevada Correctional Center to those in place on
23 September 1, 2009." *Id.* at 1.

24 Defendants oppose and argue that plaintiff is not likely to succeed on the merits of his claims,
25 has not demonstrated a strong likelihood of irreparable injury, and the balance of hardships does not
26 tip in his favor (#21). Defendants also argue that plaintiff's request that the court impound all
27 federal funds that NDOC received for the past two years bears no relation to the alleged harm

1 plaintiff seeks to correct. *Id.* at 15. Lastly, defendants assert that plaintiff's request for injunctive
 2 relief is not narrowly tailored to the specific claims at issue in plaintiff's complaint. *Id.*

3 Defendants submit NDOC Administrative Regulation ("AR") 810 which governs religious
 4 faith group activities and programs and the NDOC religious practice manual. *Id.* at Ex. A.
 5 Defendants provide NNCC Associate Warden Elizabeth Walsh's declaration which recounts the
 6 events which occurred during the Kairos Prison Ministries three-day event in 2009. *Id.* at Ex. B.
 7 Defendants also submit the NNCC chapel schedules. *Id.* at Ex. C.

8 The court notes that the plaintiff is proceeding *pro se*. "In civil cases where the plaintiff
 9 appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit
 10 of any doubt." *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988); *see*
 11 *also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

12 II. DISCUSSION & ANALYSIS

13 A. Discussion

14 1. Preliminary Injunction Legal Standard

15 A preliminary injunction is an "extraordinary and drastic remedy" that is never awarded as
 16 of right. *Munaf v. Geren*, 553 U.S. 674, 688-90 (2008) (citations and quotation omitted). Instead,
 17 in every case, the court "must balance the competing claims of injury and must consider the effect
 18 on each party of the granting or withholding of the requested relief." *Winter v. Natural Resources*
 19 *Defense Council, Inc.*, 555 U.S. 7, 21 (2008) (citation omitted). The instant motion requires that the
 20 court determine whether plaintiff has established the following: (1) he is likely to succeed on the
 21 merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance
 22 of equities tips in his favor; and (4) an injunction is in the public interest. *Id.* at 19 (citations
 23 omitted).

24 Before *Winter*, courts in the Ninth Circuit applied an alternative "sliding-scale" test for
 25 issuing a preliminary injunction that allowed the movant to offset the weakness of a showing on one
 26 factor with the strength of another. *See Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049-
 27 50 (9th Cir. 2010); *see also Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). In *Winter*,

1 the Supreme Court did not directly address the continued validity of the Ninth Circuit's sliding-scale
2 approach to preliminary injunctions. *See Winter*, 555 U.S. at 51 (Ginsburg, J., dissenting) ("[C]ourts
3 have evaluated claims for equitable relief on a 'sliding scale,' sometimes awarding relief based on
4 a lower likelihood of harm when the likelihood of success is very high . . . This Court has never
5 rejected that formulation, and I do not believe it does so today."); *see also Alliance*, 622 F.3d. at
6 1049. In light of the *Winter* decision, however, the Ninth Circuit has indicated, "[t]o the extent our
7 cases have suggested a lesser standard, they are no longer controlling, or even viable." *Am. Trucking*
8 *Assocs. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009). Accordingly, plaintiff is required to
9 make a showing on all four of the preliminary injunction requirements.

10 An even more stringent standard is applied where mandatory, as opposed to prohibitory
11 preliminary relief is sought. The Ninth Circuit has noted that although the same general principles
12 inform the court's analysis, "[w]here a party seeks mandatory preliminary relief that goes well
13 beyond maintaining the status quo pendente lite, courts should be extremely cautious about issuing
14 a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir.
15 1984). Thus, an award of mandatory preliminary relief is not to be granted unless both the facts and
16 the law clearly favor the moving party and extreme or very serious damage will result. *See Anderson*
17 *v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979). "[I]n doubtful cases" a mandatory injunction
18 will not issue. *Id.*

19 Finally, the Prison Litigation Reform Act (PLRA) mandates that prisoner litigants must
20 satisfy additional requirements when seeking preliminary injunctive relief against prison officials:

21 Preliminary injunctive relief must be narrowly drawn, extend no further than
22 necessary to correct the harm the court finds requires preliminary relief, and
23 be the least intrusive means necessary to correct that harm. The court shall
24 give substantial weight to any adverse impact on public safety or the
25 operation of a criminal justice system caused by the preliminary relief and
26 shall respect the principles of comity set out in paragraph (1)(B) in tailoring
27 any preliminary relief.

18 U.S.C. § 3626(a)(2). Thus, Section 3626(a)(2) limits the court's power to grant preliminary
injunctive relief to inmates. *Gilmore v. People of the State of California*, 220 F.3d 987, 998 (9th Cir.
2000). "Section 3626(a) . . . operates simultaneously to restrict the equity jurisdiction of federal

1 courts and to protect the bargaining power of prison administrators-no longer may courts grant or
2 approve relief that binds prison administrators to do more than the constitutional minimum.” *Id.* at
3 999.

4 **B. Analysis**

5 Plaintiff seeks an order requiring the impounding of all federal funds acquired or expended
6 by NDOC since April 1, 2010, or requiring the restoration of the religious programs at NNCC which
7 were in place prior to September 1, 2009 (#3). Defendants argue that plaintiff has not made a
8 sufficient showing on the required elements for preliminary injunctive relief (#21).

9 As an initial matter, the court agrees with defendants that plaintiff’s request that federal funds
10 be impounded is not related to alleged harm he seeks to correct. The Supreme Court has held that
11 a preliminary injunction is appropriate to grant relief of the “same character as that which may be
12 granted finally.” *De Beers Consol. Mines v. U.S.*, 325 U.S. 212, 220 (1945). The court will not
13 address this request due to procedural deficiencies. Plaintiff claims that the cancellation of a three-
14 day event violated his First and Fourteenth Amendment rights and his rights under RLUIPA.
15 Plaintiff’s request to restore all religious programs to those which were in existence on September
16 1, 2009, is overbroad and does not comport with the PLRA’s mandate to design injunctive relief that
17 is the least intrusive means necessary to address the harm and is “narrowly drawn.” Nevertheless,
18 the court analyzes whether plaintiff has met the requirements for a preliminary injunction related to
19 his request that all religious programs at NNCC be restored to those in place in September 2009.

20 **1. Likelihood of Irreparable Harm**

21 “Our frequently reiterated standard requires plaintiffs seeking preliminary relief to
22 demonstrate that irreparable injury is likely in the absence of an injunction.” *Winter*, 555 U.S. at 21.
23 “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with
24 our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon
25 a clear showing that the plaintiff is entitled to such relief.” *Id.* (quoting *Mazurek v. Armstrong*, 520
26 U.S. 968, 972 (1997) (per curiam)). “Courts generally look at the immediacy of the threatened injury
27 in determining whether to grant preliminary injunctions.” *Privitera v. Cal. Bd. of Med. Quality*

1 *Assurance*, 926 F.2d 890, 897 (9th Cir. 1991).

2 Plaintiff argues he will suffer irreparable injury because he has missed more than twenty
3 services and cannot remember the last time he received communion (#3, pp. 4-5). A court need not
4 consider claims that were not raised in the complaint. *McMichael v. Napa County*, 709 F.2d 1268,
5 1273 n.4 (9th Cir. 1983). Additionally, “a party moving for a preliminary injunction must
6 necessarily establish a relationship between the injury claimed in the party’s motion and the conduct
7 asserted in the complaint.” *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994). Plaintiff’s
8 pending lawsuit includes claims related to NDOC’s cancellation of the Kairos three-day event and
9 the requirement that group worship be supervised (#14). Plaintiff does not link the allegations in his
10 complaint to the irreparable harm he discusses in his motion.

11 Further, plaintiff practices his Episcopal religion freely by attending group worship
12 throughout the week (#21, Ex. C). Plaintiff may also pray, study, and possess religious property.
13 *Id.* at Ex. A, p. 34. Courts have rejected the view that prison personnel are obligated, under
14 RLUIPA, to provide group services when inmates request them. *See Adkins v. Kaspar*, 393 F.3d 559
15 (5th Cir. 2009), *cert. denied*, 5454 U.S. 1104 (2005) (holding that the prison did not impose a
16 substantial burden on his religious exercise by not accommodating his request to congregate with
17 other members of his faith). Plaintiff has not demonstrated that he will suffer irreparable injury if
18 the court does not order NDOC to restore all religious programs at NNCC to those in place in 2009.

19 **2. Likelihood of Success on the Merits**

20 **a. First Amendment**

21 To succeed on the merits of his claims under the First Amendment, plaintiff must show that
22 defendants have burdened the practice of his religion without a justification reasonably related to
23 legitimate penological interests. *See Shakur v. Schriro*, 514 F.3d 878, 884 (9th Cir. 2008).
24 “Convicted prisoners do not forfeit all constitutional protections by reason of their conviction and
25 confinement in prison.” *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). However, “lawful incarceration
26 brings about the necessary withdrawal or limitation of many privileges and rights.” *O’Lone v. Estate*
27 *of Shabazz*, 482 U.S. 342, 348 (1987) (quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948)). A

1 prisoner's right to free exercise of his or her religion is necessarily limited by incarceration, and may
2 be curtailed to achieve legitimate correctional goals or to maintain prison security. *McElyea v.*
3 *Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987) (per curiam). To implicate the Free Exercise Clause, a
4 belief must be "sincerely held" and "rooted in religious belief." *See Shakur*, 514 F.3d at 885
5 (holding that the sincerity test set forth in *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994), and
6 *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981), determines the applicability of the Free
7 Exercise Clause).

8 "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid
9 if it is reasonably related to legitimate penological interests." *Shakur*, 514 F.3d at 883-84 (quoting
10 *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Under *Turner*, the court must balance four factors in
11 determining whether a prison regulation is reasonably related to legitimate penological interests.
12 "First, there must be a 'valid, rational connection' between the prison regulation and the legitimate
13 governmental interest put forward to justify it." *Turner*, 482 U.S. at 89. Second, the court must
14 determine whether there are "alternative means of exercising the right that remain open to prison
15 inmates." *Id.* at 90. Third, the court must consider "the impact accommodation of the asserted
16 constitutional right will have on guards and other inmates, and on the allocation of prison resources
17 generally." *Id.* Fourth, "the absence of ready alternatives is evidence of the reasonableness of a
18 prison regulation." *Id.* Even if defendants' cancellation of the religious event or requirement that
19 group worship be supervised burdened plaintiff's practice of his religion, plaintiff fails to show that
20 there is no justification reasonably related to legitimate penological interests.

21 The first *Turner* factor requires determining whether there is a legitimate penological interest
22 that is rationally related to the disputed regulation. Defendants submit NNCC Associate Warden
23 Elizabeth Walsh's declaration which discusses the security and safety threat which occurred at the
24 2009 Kairos three-day event (#21, Ex. B).² Kairos volunteers brought wigs to the event and also set
25 up tall dividers in the gym which jeopardized the safety of inmates, staff, and volunteers. *Id.* Due
26

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² Defendants argue that the cancellation of one specific religious event does not burden plaintiff's right to practice his religion. Nevertheless, defendants analyze the *Turner* factors (#21).

1 to safety concerns, NNCC cancelled the last day of the 2009 event. *Id.* at 1. Thus, while Kairos
 2 Ministries may enter NNCC for monthly events and attend the weekly Episcopal services, NNCC
 3 determined that the three-day event poses a security and safety risk to inmates and staff. Further,
 4 there is a legitimate penological interest in requiring volunteers be present during indoor religious
 5 events. As Ms. Walsh states in her declaration, inmates may not gather indoors for group worship
 6 without the supervision of either a staff member or approved religious volunteer because of safety
 7 risks to inmates and also a risk to the security of the prison. *Id.* at 2.³ Defendants provide legitimate
 8 penological interests for their actions and regulations. This factor favors the defendants.

9 The second *Turner* factor examines whether plaintiff has “alternative means by which he can
 10 practice his religion” or is “denied all means of religious expression.” *Shakur*, 514 F.3d at 886.
 11 Plaintiff may attend monthly Episcopal events and also weekly Episcopal service (#21, Exs. B, C).
 12 Plaintiff may pray, study, and worship in private. *Id.* at Ex. A, p. 34. Plaintiff may also possess
 13 approved religious items. *Id.* Despite not having a three-day event and the requirement that a
 14 volunteer be present during group worship, plaintiff has alternative means by which he can practice
 15 his Episcopalian faith. This factor favors the defendants.

16 The third *Turner* factor considers the “impact accommodation of the asserted constitutional
 17 right will have on guards and other inmates, and on the allocation of prison resources generally.”
 18 *Turner*, 482 U.S. at 90. As previously discussed, the accommodations which plaintiff requests
 19 would have a significant impact on the safety of prison staff and inmates. NNCC has determined
 20 that the Kairos three-day event poses a security and safety risk to inmates, volunteers, and staff.
 21 Further, allowing inmates to gather for group worship without supervision compromises the safety
 22 of prison staff and inmates. This factor favors defendants.

23 The fourth *Turner* factor requires consideration of whether “there are ready alternatives to
 24 the prison’s current policy that would accommodate [plaintiff] at *de minimus* cost to the prison.”
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26 ³ Court have upheld prison requirements that inmate-led group worship be supervised. See
 27 *Anderson v. Angelone*, 123 F.3d 1197, 1198-99 (9th Cir. 1997) (upholding a ban on inmate-led religious
 activity without supervision); *Cooper v. Tard*, 855 F.2d 125, 129 (3rd Cir. 1988) (sustaining regulation
 prohibiting unsupervised inmate religious activity); *Hadi v. Horn*, 830 F.2d 779, 784-85 (7th Cir. 1987)
 (finding that cancellation of religious services when outside chaplain not available was reasonable).

1 *Shakur*, 514 F.3d at 887. “[T]he absence of ready alternatives is evidence of the reasonableness of
 2 a prison regulation,” *Washington v. Harper*, 494 U.S. 210, 225 (1990), while the existence of
 3 alternatives may be “evidence that the [policy] is not reasonable but is an ‘exaggerated response’ to
 4 prison concerns.” *Turner*, 482 U.S. at 90-91. NNCC permits Kairos Prison Ministries to come to
 5 NNCC and sponsor weekly and monthly Episcopal services (#21, Ex. C). However, there is no
 6 ready alternative to the requirement that inmates be supervised during times of group worship. For
 7 the foregoing reasons, plaintiff is not likely to succeed on the merits of his First Amendment claims.

8 Plaintiff has not shown he is likely to succeed on the merits of his First Amendment claims
 9 because he does not show that defendants’ actions are not rationally related to legitimate government
 10 interests. *Turner v. Safley*, 482 U.S. 78, 89-91 (1987). Finally, the Supreme Court has held that it
 11 is not a First Amendment violation if a plaintiff is unable to attend certain prayer services but is free
 12 to participate in other religious ceremonies and practices. *See O’Lone*, 482 U.S. at 351-52.

13 **b. RLUIPA**

14 To establish an RLUIPA violation, plaintiff must show that the defendants imposed a
 15 substantial burden on his religious exercise. *See Warsoldier v. Woodford*, 418 F.3d 989, 994 (9th
 16 Cir. 2005). Once plaintiff shows a substantial burden on his exercise of religion, defendants must
 17 prove that the burden both furthers a compelling governmental interest and is the least restrictive
 18 means of achieving that interest. *Id.* at 995. Although RLUIPA does not define “substantial
 19 burden,” the Ninth Circuit has stated that a substantial burden is one that is “‘oppressive’ to a
 20 ‘significantly great’ extent” and “a ‘substantial burden on ‘religious exercise’ must impose a
 21 significantly great restriction or onus upon such exercise.” *Warsoldier*, 418 F.3d at 995 (quoting *San*
 22 *Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)). The burden need
 23 not concern a religious practice that is compelled by, or central to, a system of religious belief, *see*
 24 2000cc-5(7)(A); however, the burden must be more than an inconvenience. *Navajo Nation v. U.S.*
 25 *Forest Serv.*, 479 F.3d 1024, 1033 (9th Cir. 2007), *aff’d en banc*, 535 F.3d 1058, 1068 (9th Cir.
 26 2008) (internal quotations and citations omitted). A burden is substantial under RLUIPA when the
 27 state, “denies [an important benefit] because of conduct mandated by religious belief, thereby putting

1 substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Shakur*, 514
 2 F.3d at 888 (quoting *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18
 3 (1981) (internal quotations omitted)).

4 Plaintiff fails to show that cancellation of the Kairos three-day event substantially burdens
 5 his practice of religion. Plaintiff also fails to show that cancellation of one religious event prevents
 6 him from “engaging in religious conduct or having a religious experience.” *Navajo Nation*, 535 F.3d
 7 at 1091. Plaintiff wholly fails to explain how the requirement that group worship be supervised
 8 substantially burdens his exercise of religion. Plaintiff repeatedly states that “defendants have not
 9 and cannot explain” their actions; however, it is plaintiff’s burden to prove that the defendants’
 10 actions substantially burden his exercise of religion (#3, p. 3). Plaintiff fails to do so.

11 **c. Fourteenth Amendment Equal Protection Clause**

12 Lastly, under the Equal Protection Clause, plaintiff must show that prison officials
 13 intentionally discriminated against him on the basis of his religion by failing to provide him a
 14 reasonable opportunity to pursue his faith compared to other similarly situated religious groups.
 15 *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003). Plaintiff must show evidence of
 16 discriminatory intent. See *Washington v. Davis*, 426 U.S. 229, 239-40 (1976). Plaintiff alleges that
 17 NNCC allegedly pays for supervision of Hanukkah ceremonies over an eight-day period but refuses
 18 to pay for supervision of the three-day Kairos event. Plaintiff further claims that NNCC requires that
 19 plaintiff’s group worship be supervised but Native American and Pagan religious ceremonies are
 20 conducted without supervision by a volunteer (#14, p. 9; #3, p. 3).

21 Plaintiff does not address his equal protection claims in discussing the requirements for
 22 preliminary injunctive relief. Plaintiff does not provide evidence that defendants cancelled the
 23 Kairos event and required a volunteer at group worship with the discriminatory intent to interfere
 24 with and substantially burden his religious exercise. In fact, plaintiff has been provided a reasonable
 25 opportunity to pursue his Christian Episcopalian faith and there is no evidence of intentional
 26 discrimination. Inmates such as plaintiff who wish to practice their religion indoors need supervision
 27 (#21, Ex. B, p. 2). On the other hand, Native American and Pagan religions gather outdoors and staff

1 supervise them through the gun towers. *Id.*

2 **3. Balance of Hardships**

3 The balance of hardships does not tip sharply in plaintiff's favor. Issuance of any preliminary
4 injunctive relief would require this court to significantly interfere with the internal processes of the
5 NDOC. Further, plaintiff's request would compromise the risks to the safety and security at NNCC.
6 Given that the court must accord "substantial weight" to the effects of injunctive relief on the
7 operation of the prison, the court finds that the balance of hardships favors the defendants. *See* 18
8 U.S.C. § 3626(a)(2).

9 **4. Public Interest**

10 Here, the public is not served where the court's order would compromise the safety and
11 security of the prison, or where resolution of the instant lawsuit will provide adequate relief to the
12 inmate. Further, the court is not in a position to decide security decisions in prisons. *See Turner*,
13 482 U.S. at 89 (holding that the courts should not subject security-related judgments of prison
14 officials to strict scrutiny). Therefore, plaintiff's motion for a preliminary injunction should be
15 denied.

16 **III. CONCLUSION**

17 Based on the foregoing and for good cause appearing, the court concludes that plaintiff has
18 not sufficiently shown that he meets the requirements for the granting of a preliminary injunction.
19 Nor has plaintiff presented any serious questions as to the merits of his claim. As such, the court
20 recommends that plaintiff's motion for a preliminary injunction (#3) be **DENIED**.

21 The parties are advised:

22 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,
23 the parties may file specific written objections to this Report and Recommendation within fourteen
24 days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and
25 Recommendation" and should be accompanied by points and authorities for consideration by the
26 District Court.


27 2. This Report and Recommendation is not an appealable order and any notice of appeal

1 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

2 **IV. RECOMMENDATION**

3 **IT IS THEREFORE RECOMMENDED** that plaintiff's motion for a preliminary
4 injunction (#3) be **DENIED**.

5 **DATED:** August 6, 2012.

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9 **UNITED STATES MAGISTRATE JUDGE**
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